

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Correa Analyst: LuAnna Hass Bill Number: AB 1845

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: June 5, 2002

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Lien Priority/Liens To Enforce A Victim Restitution Order Take Priority Over Liens Filed By The State

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 22, 2002.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 22, 2002, STILL APPLIES.

☒ OTHER - See comments below.

## SUMMARY

This bill would allow the interest of a crime victim with a restitution order to take priority over any state tax lien.

## SUMMARY OF AMENDMENT

The June 5, 2002, amendment would require state agencies that receive payment of a state tax lien to apply the payment as required by the bill (allowing liens for restitution orders to be satisfied prior to the state tax lien). As a result of the amendment, the department has identified an additional implementation consideration. For convenience, all new and existing concerns are provided below. The remainder of the department's analysis of the bill as amended April 22, 2002, still applies. Also, the collection estimate has been included below.

## POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

6/19/02

## IMPLEMENTATION CONSIDERATIONS

The department anticipates implementing this bill on a case-by-case basis. The department has identified the following implementation concerns and if these concerns were resolved, this bill would not significantly impact the department's programs and operations.

1. This bill allows the interest of a crime victim to take priority over a state tax lien, but does not require the crime victim to record their interest as a judgment creditor, which is contrary to state lien law that requires the recordation of liens. Without recordation, a title company and FTB may be unaware of a victim's priority and FTB may receive proceeds from the sale of the "criminal" taxpayer's real property. Under current practice, if the proceeds received from the sale completely satisfy the FTB tax liability, FTB would release the state tax lien. Since a state tax lien would be invalid against the interest of a crime victim, FTB could be required to pay over to the victim any proceeds collected from the "criminal" taxpayer. The payment would, in principle, reinstate the unpaid tax liability of the "criminal" taxpayer. Since FTB would have already released the tax lien upon receiving the proceeds from the sale, nothing in current law allows the department to reinstate that tax lien to reflect the original recordation date. Therefore, FTB would be relegated to a position where it would have no secured interest in the "criminal's" real property. If the crime victim had voluntarily recorded his lien, this scenario would still cause FTB to lose priority to any other existing lien holding creditors. However, amounts would not have been received before a victim's restitution order was satisfied.
2. Assuming this bill is effective and operative January 1, 2003, the language is silent on whether this bill applies to restitution orders issued before or after that date.
3. It is unclear whether this bill would have any direct impact on the department's other means of collecting taxes by levy on personal property. This bill could be construed to allow a victim with a restitution order to supersede any collection actions taken by FTB. However, this bill does not provide for a retroactive effect, which would prohibit a payment to the victim of funds collected from the "criminal" taxpayer prior to the effective date of this bill.
4. If a victim were to assert their interest as priority over FTB, it is unclear if FTB would be required to substantiate the amount of unpaid restitution to be collected by the victim, and how the department would substantiate those amounts.

The June 5, 2002, amendment would require state agencies that have received a payment of a state tax lien to apply the payment as required by this bill. Since the Government Code section affected by this bill already establishes the payment priority regarding liens and this bill would amend that priority with respect to restitution orders and certain state tax liens, it appears this amendment would be redundant. Further, the intent of this amendment is unclear and the language is vague. For example, if the intent is for the state agency to "apply the payment" to the lien holding parties, then the department does not have the system capabilities or information to verify other possible lien holders (similar to 4, above). If the intent is to provide for a retroactive effect and require state agencies that have already received funds as a result of a state tax lien unrelated to a restitution order to pay victims the funds previously collected by the agency, as described in 3 above, this language would be insufficient, since the effective date ensures the statute is prospective.

In addition, this amendment could be interpreted to expand the scope beyond the original intent of the bill, which was to allow a crime victim's restitution order to supersede the state's interest in the "criminal's" real or personal property so long as the tax liability that is the basis of the state tax lien arose from a taxpayer's activities that resulted in the restitution order. This amendment could require payment received by a state agency for satisfaction of any state tax lien to be superceded by a restitution order.

## TECHNICAL CONSIDERATION

This bill uses the phrase "payment of a state tax lien," which is technically imprecise. State tax liens are not "paid." Instead the department receives payments to satisfy liabilities that are secured by a state tax lien. Department staff is available to work with the author's office to resolve this concern and draft language.

## ECONOMIC IMPACT

### Collection Estimate:

Based on limited information and the discussion below, it is estimated that the potential reduction in Personal Income Tax (PIT) collections due to the change in collection priorities would be as follows:

Estimated Revenue Impact of AB 1845 Effective After Enactment Assumed Enactment After 6/30/2002		
2002-03	2003-04	2004-05
-\$2.5	-\$2.5	-\$3.0

This proposal does not take into consideration any collection revenue attributable to wage levies or other collection actions nor does it consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

### Collection Discussion:

Revised collection losses above reflect an increase of approximately \$500,000 annually for 2002-03 and 2003-04 and \$1 million for 2004-05 from the previous version of this bill as introduced January 28, 2002. These changes in losses are primarily attributable to instances where the provisions of this bill would result in a circularity of lien priority, where the victim's lien is made senior to a state tax lien, but the state tax lien is senior to one or more lien creditors that are senior to the victim's restitution lien. In addition this estimate does not include additional losses resulting from unrecorded victim liens taking priority over state tax liens. Such losses cannot be quantified since the data and information needed are not available.

Further, this analysis does not take into consideration the implementation scenarios regarding the June 5, 2002, amendment as discussed above under "Implementation Considerations." If the intent of the amendment is to expand the scope of this bill to include tax liens other than those already identified, the additional revenue loss attributed to this intent could be significant.

## **ARGUMENTS/POLICY CONCERNS**

Criminal restitution orders are assessed against a defendant for any crime committed in California. Many taxpayers that have delinquent state taxes (income, sales, or employment) also may owe restitution. Under this bill, a victim's restitution order would take priority if the tax liability that is the basis of the state tax lien arose from a taxpayer's activities that resulted in a criminal restitution. It is unclear why tax collection efforts, which benefit the state as a whole, should be given a lower priority.

Victims of "white-collar" crimes (embezzlement, fraud) often are individuals that are business owners that have insurance to cover financial losses due to these types of crimes. Depending on the insurance policy, the insurance company may reimburse the victim to cover the loss and then collect on the restitution order to reimburse their funds. Other policies may reimburse the victim to cover the loss (up to a maximum amount stated in the policy) and require the victim to collect on the restitution order. The victim would be allowed to keep any additional funds recovered after reimbursing their insurance company for the amount of the loss coverage. Therefore, this bill could be construed to give collection of restitution by insurance companies a higher priority than the collection of taxes.

Although this bill would allow liens filed to enforce a victim's restitution order to take priority over state tax liens, it would not affect federal tax liens that come into existence before the lien for restitution. Therefore, if a federal lien has first priority followed by the department's state income tax lien, a lien for restitution would take priority over the department's lien. The department would lose priority to the restitution lien, but the lien for restitution would still only be satisfied to the extent of amounts in excess of the federal lien.

Similarly, if the department's lien has first priority and a federal lien has second priority, and no other third party creditor liens exist, the liens for restitution would take precedence over the department's lien. If the victim receives payment that is equivalent to the full amount of the state tax lien (as described above under This Bill) and since this bill has no effect on the federal lien, the department's lien would move from first priority to third priority as a result of this bill.

## **LEGISLATIVE STAFF CONTACT**

LuAnna Hass  
Franchise Tax Board  
845-7478  
[LuAnna.Hass@ftb.ca.gov](mailto:LuAnna.Hass@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
845-6333  
[Brian.Putler@ftb.ca.gov](mailto:Brian.Putler@ftb.ca.gov)